

7 FAM 280

PRESUMPTIVE DEATH

(CT:CON-510; 03-13-2014)
(Office of Origin: CA/OCS/L)

7 FAM 281 INTRODUCTION

(CT:CON-510; 03-13-2014)

- a. In many situations, such as earthquakes, air crashes, or floods, the deaths of U.S. citizens will be presumed by the local authorities without actually being proven.
- b. Section 234 of the James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (Public Law 106-113) (22 U.S.C. 2715b) explicitly authorizes a consular officer to issue a report of death (CRODA) or of presumptive death in the case of a finding of death by the appropriate local authorities. In addition, it explicitly authorizes a consular officer to issue a report of presumptive death in the absence of a finding of death by the appropriate local authorities. This latter provision is intended to allow the consular officer to issue a report of presumptive death in exceptional circumstances where the evidence that the individual has died (e.g., he or she was listed on a passenger manifest on an aircraft that had no survivors) is persuasive, but local authorities have not issued and are not likely to issue a finding of death (because, e.g., issuance of a local death certificate requires forensic evidence that is not available, there is no local authority that clearly has jurisdiction, or by law a death certificate in case of presumed death may not be issued for a lengthy period such as five years)

7 FAM 282 LOCAL FINDING

(CT:CON-510; 03-13-2014)

When there is a local finding of presumptive death by a competent local authority, a consular officer should prepare a consular report of presumptive death on the Form DS-2060, Report of the Death of an American Citizen Abroad with appropriate annotations in the remarks section, when authorized by CA/OCS.

Posts should consult CA/OCS/ACS, OCS/L, and L/CA if post has any question regarding whether documentation issued by local authorities meets the standard for issuance under federal regulation.

7 FAM 283 NO LOCAL FINDING

(CT:CON-510; 03-13-2014)

- a. A United States citizen or non-citizen national may disappear or be missing in circumstances where it appears likely that the individual has died, but there is no local authority able or willing to issue a death certificate, or no judicial finding of death, or no competent *local* authority willing to make a finding of presumptive death. This situation may include, for example, death in a plane crash where there are no identifiable remains, death in a plane crash beyond the territory of any country, death in an avalanche, disappearance/death at sea, or other sudden disaster where the body is not immediately (or perhaps ever) recoverable.
- b. Authorization of issuance. The Department (CA/OCS/ACS), with the concurrence of CA/OCS/L (ASK-OCS-L@state.gov) and L/CA, may authorize the issuance of a consular report of presumptive death in such circumstances. A consular report of presumptive death **may not** be issued without the Department's authorization, which must be approved by the Managing Director of CA/OCS.
- c. Considerations in determining whether the *Department's Bureau of* Consular Affairs (CA) office will authorize issuance of a Report of Presumptive Death. The Department's decision whether to issue a Report of Presumptive Death is discretionary, and will be based on the totality of circumstances in each particular case. Although no one factor is conclusive or determinative, the Department will consider the factors cited below, among other relevant considerations, when deciding whether to authorize issuance in a particular case:
 - (1) Whether the death is believed to have occurred within a geographic area where no sovereign government exercises jurisdiction;
 - (2) Whether the government exercising jurisdiction over the place where the death is believed to have occurred lacks laws or procedures for making findings of presumptive death;
 - (3) Whether the government exercising jurisdiction over the place where the death is believed to have occurred requires a waiting period exceeding five years before findings of presumptive death may be made;
 - (4) Whether the person who is believed to have died was seen to be in imminent peril by credible witnesses;
 - (5) Whether the person who is believed to have died is reliably known to have been in a place which experienced a natural disaster, or catastrophic event, that was capable of causing death;
 - (6) Whether the person believed to have died was listed on the certified manifest of, and was confirmed to have boarded, an aircraft, or vessel, which was destroyed and, despite diligent search by competent authorities,

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some or all of the remains were not recovered or could not be identified;

(7) Whether there is evidence of fraud, deception, or malicious intent.

7 FAM 284 PROCESSING

(CT:CON-510; 03-13-2014)

- a. Consular reports of presumptive death should be processed and issued in accordance with 22 CFR 72.5 and 22 CFR 72.6 (revised).
- b. In any case where a court ruling or statement by local authorities is not obtainable, the consular officer should submit to the Department (CA/OCS/ACS) for an advisory opinion as much relevant information as possible, including all available information about the circumstances of the presumed death, personal data (such as date of birth, name, physical description, citizenship information), sworn statements taken from witnesses and companions, newspaper clippings, and other relevant data.
- c. In preparing a Report of Presumptive Death, the consular officer must insert a statement, under the heading "Cause of Death," such as "reported missing, believed to be dead," giving the source of the information on which the presumption is based.
- d. Also include a statement in the "Remarks" section, specifying the requirements of local law for the establishment of a legal presumption of death for missing persons. For example, determine whether a person is presumed to be considered legally dead automatically after a prescribed period, or whether formal court action is necessary to give the presumption validity.
- e. If a presumed death is subsequently established legally, submit a final and complete the report of death. The title should read, "Final Report of the Death of an American Citizen" and the "Remarks" section must refer to the Presumptive Report.

7 FAM 285 REVOCATION

(CT:CON-510; 03-13-2014)

- a. The Department (CA/OCS/ACS) with the concurrence of CA/OCS/L and L/CA, may revoke a report of presumptive death if it determines in its sole discretion that the report was issued in error. Authorization must be granted by the *Deputy Assistance Secretary* of CA/OCS.
- b. If a report of presumptive death is revoked, the permanent record in Passport Services Vital Records and the appropriate consular databases will be annotated accordingly.
- c. As appropriate the use of a deceased identity (CLASS reason code E) or falsification of death (CLASS reason code F) should be reflected in CLASS *via*

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the Enterprise Case Assessment Service (ECAS) in the relevant name. (See 7 FAM 1300 Appendix A). Entry of a fraud lookout would be determined by factors beyond the revocation (See CA/FPP Intranet page (Office of Fraud Prevention Programs) *for step-by-step instructions on creating ECAS records.*)

- d. CA/OCS/ACS will notify the state vital records office of the issuance of a Certificate of Presumptive Death in the same manner as is done for a Report of Death. (See 7 FAM 276.3).
- e. For general guidance on preparation of Reports of Death, see 7 FAM 270.

7 FAM 286 THROUGH 289 UNASSIGNED